REMARKS

The above amendments to the above-captioned application along with the following remarks are being submitted as a full and complete response to the Final Office Action dated May 25, 2010 (U.S. Patent Office Paper No. 20100519). In view of the above amendments and the following remarks, the Examiner is respectfully requested to give due reconsideration to this application, to indicate the allowability of the claims, and to pass this case to issue.

Status of the Claims

As outlined above, claims 16 and 17 stand for consideration in this application, wherein claim 16 is being amended to improve form. All amendments to the application are fully supported therein. Applicants hereby submit that no new matter is being introduced into the application through the submission of this response.

Formality Objection

Claim 16 was objected to for the recitation of "a first mobile terminal of the at least one mobile terminal." In particular, the Examiner stated that this claim language was unclear. Applicants respectfully disagree. As set forth above, claim 16 is directed to "[a] data delivery system including at least one mobile terminal." That is, a data delivery system in accordance with claim 1 may include either a single mobile terminal or multiple mobile terminals. In embodiments of claim 1 in which the data delivery system includes a single mobile terminal, the claim language "a first mobile terminal of the at least one mobile terminal" refers to the single mobile terminal. Alternatively, in embodiments of claim 1 in which the data delivery system includes multiple mobile terminals, the claim language "a first mobile terminal of the at least one mobile terminal" refers to a single mobile terminal of the multiple mobile terminals. Accordingly, Applicants respectfully submit that claim 16 is clear and, therefore, request reconsideration and withdrawal of the objection to claim 16.

Prior Art Rejections

The Examiner rejected claims 16 and 17 under 35 U.S.C. §103(a) as being unpatentable over Maufer (U.S. Patent No. 7,684,440) in view of Firestone (U.S. Patent No. 6,965,646). Applicants have reviewed the above-noted rejections, and hereby respectfully traverse.

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A proper obviousness rejection that relies on a combination of prior art elements requires establishing that the prior art references, when combined, teach or suggest all of the claim limitations. MPEP §2143. Furthermore, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (C.C.P.A. 1970). That is, to render a claim obvious under 35 U.S.C. §103, a determination must be made that the claimed invention "as a whole" would have been obvious to person of ordinary skill in the art when the invention was unknown and just before it was made. MPEP §2142.

Accordingly, Applicants respectfully submit that Maufer, either alone or in combination with Firestone, fails to teach, suggest, or disclose each and every limitation of claims 16 and 17. For example, neither Maufer nor Firestone teaches or suggests "a search packet sending module configuring ping packets **using MPEG-TS (Moving Picture Experts-Group-Transports Stream) formatted IP packet data** and sending the ping packets to the data delivery server as search packets" as required by independent claim 16. Rather, Maufer merely describes "an apparatus to facilitate the use of larger-than-Ethernet-standard frames having different sizes in a network" that "comprises identifying a network element capable of using data formatted as a non-standard frame" and "provides for determining a non-standard frame size that is useable by the network element." (Abstract).

More particularly, Maufer describes that a "probe is sent to the target station to discover the maximum frame size that the target station can accept (this 'largest frame size' is also referred to as the peer MTU). This other probe is referred to as a 'peer MTU probe' ('PMP'). The PMP is configured to have an adjustable frame size so that it can be modified to discover the largest MTU size from a range of possible MTU sizes. If the first PMP (using the largest frame size supported by the sending station) is successful, then this per-peer MTU size, equal to the size of the first PMP, is recorded....But if the first PMP is unsuccessful in determining that target station can accept a first non-standard MTU size, then a second PMP is sent...to determine whether that target station can accept a second non-standard MTU size that is adjusted from the first non-standard MTU size....This discovery process continues in a similar manner until a usable larger-than-1522-byte MTU size is discovered, or until a standard Ethernet MTU size is selected as the default frame size when no non-standard MTU sizes are discovered." (Cols. 4-5, ll. 42-7). That is, Maufer simply provides that a general peer MTU probe is made adjusting the formatting of data according to various frame sizes.

Maufer fails to provide any mention or suggestion of any configuring of ping packets using MPEG-TS formatted IP packet data, as required by claim 16.

Likewise, Firestone merely describes that because "a given network protocol will have a Maximum Transfer Unit (MTU) size," "[t]he segmentor 222 will create network packets that have as many bytes as possible without going over the MTU size. To create the network packets, the segmenter 222 reads data out of the audio buffer 211 and video buffer 213. Typically, the system stream 202, its corresponding elementary video stream 210 and the elementary audio stream 208 contain constant sized MPEG packets. In contrast, the modified system stream 206 contains MPEG packets that are sized according to the RTP packets used in transmission onto the network 204. In other words, the size of the MPEG packets in the modified system stream 206 may vary to match the size of the packets for RTP protocol." (Col. 8, ll. 42-55). More particularly, Firestone describes that "[a]fter searching for and finding the start code and headers in the elementary video stream 210, the MPEG picture data is then re-sized into RTP sized packets. As mentioned before, this reformatting will depend on the MTU sizing inputs. For the elementary video stream 210 and the modified video stream 215, three RTP sized MPEG packets 318, 320 and 322 are used for the start code and first two frames 324 and 326. This reformatting of MPEG data in the elementary video stream 210 may then continue for the remainder of the elementary video stream 210 into a number of RTP sized packets based on the MTU sizing inputs." (Cols. 10-11, ll. 63-8). A segmenter that reformats a system stream of constant MPEG packets according to a size for RTP packets used in transmission over a network, as provided in Firestone, is very clearly not a search packet sending module that configures ping packets using MPEG-TS formatted IP packet data, as required by claim 16. For this reason alone, claim 1 is patentable over the cited references.

As another example, neither Maufer nor Firestone teaches or suggests that "the data delivery server includes a search packet detecting module...for determining a maximum size for a single IP packet to be sent to the first mobile terminal based upon a packet size of the detected search packet" as required by claim 16. Rather, as discussed above, Maufer contrastingly provides that that a "**probe is sent to the target station to discover the maximum frame size <u>that the target station can accept</u>**...The PMP is configured to have an adjustable frame size so that it can be modified to discover the largest MTU size from a range of possible MTU sizes." (Col. 4, ll. 42-48) (emphasis added). More specifically, Maufer explains that "<u>[o]nce a reply is received from the target station</u> **that accepts a**

certain probe size of PMP[x], the sending station can at least establish: (1) that the target station is still reachable since the RDP(s) were sent, (2) that the target station can handle MTUs having a size of at least PMP[x], and (3) the intervening network path (i.e., link) can handle MTUs having a size PMP[x]. This information can later be used to transmit data using frame sizes of the discovered peer MTU." (Col. 7, ll. 26-34) (emphasis added). A sending station that sends a probe to a target station and determines a largest MTU size for the target station upon receiving a reply from the target station, as provided in Maufer, is clearly not a data delivery server that receives a ping packet from a mobile terminal and determines a maximum size for a single IP packet to be sent to the mobile terminal based upon the size of the received packet, as required by claim 16. Moreover, Firestone fails to include any mention or suggestion that "the data delivery server includes a search packet detecting module...for determining a maximum size for a single IP packet to be sent to the first mobile terminal based upon a packet size of the detected search packet" as required by claim 16. For this reason alone, claim 1 is patentable over the cited references.

For at least these reasons, Applicants respectfully submit that Maufer, either alone or in combination with Firestone, fails to teach, disclose, or suggest each and every limitation of claim 1 and, therefore, that claim 16 is now in condition for allowance. Where an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 U.P.S.Q.2d 1596, 1598 (Fed. Cir. 1988). Because claim 17 depends directly from claim 16, Applicants respectfully submit that Maufer, either alone or in combination with Firestone, does not render obvious claim 17 for at least the reasons set forth above that it does not render obvious claim 16 and, therefore, that claim 17 is also now in condition for allowance.

Therefore, Applicants respectfully submit that the present invention as claimed is distinguishable and thereby allowable over the prior art of record.
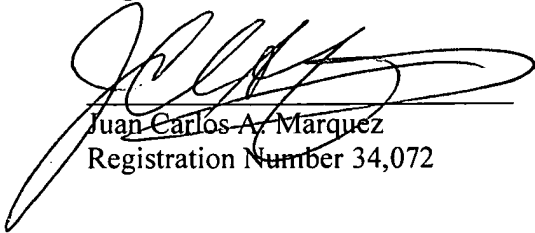

Conclusion

In view of all the above, Applicants respectfully submit that certain clear and distinct differences as discussed exist between the present invention as now claimed and the prior art references upon which the rejections in the Final Office Action rely. These differences are more than sufficient to establish that the present invention as now claimed would not have

been anticipated nor rendered obvious given the prior art. Rather, the present invention as a whole is distinguishable, and thereby allowable over the prior art.

Favorable reconsideration of this application as amended is respectfully solicited. Should there be any outstanding issues requiring discussion that would further the prosecution and allowance of the above-captioned application, the Examiner is invited to contact the Applicants' undersigned representative at the address and phone number indicated below.

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